IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2327 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVUBHA VESHALJI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2327 of 2004

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR PUJARI, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/08/2004

ORAL JUDGEMENT

#. Draft amendment is granted. The amendment is to be

carried out in the main petition forthwith.

#. Rule. Mr.Pujari, learned AGP waives service of rule for the respondents.

#. With the consent of the parties the matter is taken up for final hearing today.

#. By filing this petition, the petitioner has challenged the order passed by the Deputy Secretary, Home Department, Gujarat State in Appeal No.9 of 2003 by which the State Government has rejected the appeal of the petitioner on the ground that the same is time barred.

#. The petitioner was holding firearm and he was given licence being Licence No.66/Bhuj/87. The petitioner was subjected to the show cause notice by the District Magistrate, Kachchh at Bhuj for cancellation of the said licence on the ground that the petitioner was involved in a criminal case, being CR No.76 of 1999. The District Magistrate, thereafter, passed the order cancelling the licence of the petitioner in view of the pendency of the criminal case. The said order of the District Magistrate dated 4.9.2000 was challenged by the petitioner by way of appeal, being Appeal No.9 of 2003. The State Government, however, has rejected the said appeal on the ground that the same is barred by limitation, as, it is filed after two years and three months. In the order it is mentioned that the ground given for condonation of delay is not proper, as, the ground which is pressed in service is of earthquake, which has taken place on 26.1.2001. As against that, the order of the District Magistrate is dated 4.9.2000, i.e. prior to the earthquake. It is the aforesaid order of the State Government which is impugned in this petition.

#. At the time of hearing of this petition, Mr.Patel, learned counsel for the petitioner submitted that by oversight, the petitioner could not point out the correct facts about the delay in filing the said appeal. In the amendment, which is submitted to this Court and granted by this Court, it is averred that the petitioner was under the impression that his pending case would be decided soon and thereafter he can approach the appellate authority. Since the petitioner was awaiting the final disposal of the criminal case, he could not file the appeal immediately within 30 days and meanwhile the earthquake took place on 26.1.2001. Under the circumstances, it is submitted that there was delay in preferring the appeal before the appellate authority.

#. In my view, it cannot be said that the petitioner was vigilant in preferring the appeal. However, considering the fact that within few months from the date of the order of the District Magistrate, the earthquake took place in the area in question and consequently because of the large scale calamity in Kachchh area, if the petitioner was not in a position to approach the appellate authority, this is a case in which the State should have decided the matter on merits instead of throwing the matter on limitation ground. Under the circumstances, the matter is sent back to the State Government for reconsideration. The State Government is directed to decide the appeal of the petitioner on merits and the delay in filing the appeal is condoned. Since the petitioner has also shown negligence to some extent in not approaching the appellate authority within limitation, the petitioner is directed to pay Rs.1500/to the State Government which is to be deposited with the State Government within six weeks from today. The State Government, thereafter, shall hear the appeal on merits and dispose of the same by 25.10.2004 without further delay in this regard. Mr.Patel has assured the Court that as and when the petitioner receives intimation regarding hearing of the appeal, the petitioner either through himself or through his advocate will remain present before the concerned authority so that the proceedings are not delayed.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with costs as quantified above. The writ of this order be sent to the State Government forthwith.

(P.B.Majmudar,J)

(pathan)